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October 19, 1999

**VIA MESSENGER**

Magalie Roman Salas  
Secretary  
Office of the Secretary  
Federal Communications Commission  
Room TW-B-204  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

RE: Comments of Omnipoint Communications, Inc.  
CC Docket No. 99-295

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OCT 19 1999

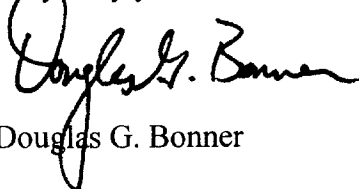
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Ms. Salas:

Enclosed, for filing, are an original and six (6) copies of the Comments of Omnipoint Communications, Inc., including affidavits, in response to the Commission's September 29, 1999 Public Notice requesting comments on New York Telephone Company's (d/b/a Bell-Atlantic - New York), et al. application for authorization to provide in-region, interLATA Services in New York.

Please date-stamp the enclosed extra copy of this filing and return it to the messenger in the self-addressed envelope which is provided. If you have any questions concerning this filing, please do not hesitate to contact me.

Very truly yours,



Douglas G. Bonner

Enclosures

cc: Susan Cruise, Esq.  
Mr. Carl Hansen

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application by New York Telephone	)	
Company (d/b/a Bell Atlantic -	)	
New York), Bell Atlantic	)	CC Docket No. 99-295
Communications, Inc., NYNEX Long	)	
Distance Company, and Bell Atlantic	)	
Global Networks, Inc., for	)	
Authorization to Provide In-Region,	)	
InterLATA Services in New York	)	

**COMMENTS OF OMNIPOINT COMMUNICATIONS, INC.**

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Attorneys for Omnipoint Communications, Inc.

## **INTRODUCTION AND SUMMARY**

The comments of Omnipoint Communications Inc. ("Omnipoint") demonstrate that Bell Atlantic's Application does not satisfy the Section 271 "competitive checklist" in several respects. Unbundled local transport is a network element that must be provided on a nondiscriminatory basis by Bell Atlantic ("BA") to all competing carriers pursuant to 47 U.S.C. § 251(c)(3), and as required by 47 U.S.C. § 271(c)(2)(B)(i)(ii) and (v).<sup>1/</sup> As discussed in these comments, BA's Application focuses almost entirely on its Competitive Checklist performance with regard to wireline CLECs, while virtually ignoring its performance concerning broadband PCS competitors. This Application reflects the disparate level of attention that Omnipoint has received from BA in New York in requesting access to BA unbundled network elements. BA has failed to provide Omnipoint with nondiscriminatory access to DS-1 or DS-3 dedicated transport services, or to BA operational support systems relating to provisioning and tracking of orders for DS-1 or DS-3 transport services, as required under Checklist Items 1, 2 and 4. Over the past three (3) years that Omnipoint has been ordering unbundled services from BA in New York, BA has failed to (1) to reach satisfactory, consistent level of meeting "Firm Order Commitment" dates provided to Omnipoint for DS-1 and DS-3 installations; (2) to promptly repair and maintain DS-1 and DS-3 outages in a nondiscriminatory manner; and (3) to provide Omnipoint with functions to track the progress of order provisioning for new DS-1 and DS-3 facilities and to obtain prompt repair and maintenance services for DS-1 and DS-3 outages. For

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<sup>1/</sup> See *Local Competition First Report and Order* at ¶¶ 315, 440.

these reasons, Omnipoint requests that the Commission deny BA's application for authority to enter the InterLATA market in New York.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application by New York Telephone	)	
Company (d/b/a Bell Atlantic -	)	
New York), Bell Atlantic	)	CC Docket No. 99-295
Communications, Inc., NYNEX Long	)	
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Global Networks, Inc., for	)	
Authorization to Provide In-Region,	)	
InterLATA Services in New York	)	

**COMMENTS OF OMNIPOINT COMMUNICATIONS, INC.**

Omnipoint Communications, Inc., ("Omnipoint"), by its undersigned counsel, submits its comments in response to the Commission's September 29, 1999 Public Notice<sup>2/</sup> requesting comments on New York Telephone Company's (d/b/a Bell-Atlantic - New York), et al. (collectively "BA") application for authorization to provide in-region, interLATA services in New York pursuant to 47 U.S.C. § 271 ("Application"). In the Application, BA argues that it should be permitted to enter the interLATA market in New York because it has met all of the requirements for Section 271 approval, including: (1) the presence of facilities-based competition serving residential and business customers; and (2) that Bell Atlantic "unquestionably satisfies the requirements of the [14 checklist items] of the competitive checklist."<sup>3/</sup> Omnipoint submits

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<sup>2/</sup> *Comments Requested on Application By Bell Atlantic for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service In the State of New York, Public Notice*, CC Docket No. 99-295, DA-99-2014 (rel. Sept. 29, 1999).

<sup>3/</sup> Application at 4-5, 8.

that neither BA's application, nor BA's documented performance in provisioning network elements such as 1.544 Mbps digital ("DS1") transmission and 45 Mbps digital ("DS3") transmission loops or special access for Omnipoint in New York, demonstrate that BA can provide reliable local services to support broadband PCS competitors. Therefore, BA should simply not be permitted to enter the interLATA market in New York based upon its current application.

### **BACKGROUND AND STATEMENT OF INTEREST**

Omnipoint and its affiliates are licensees operating broadband Personal Communications Services ("PCS") systems in the New York Major Trading Area ("MTA") and other markets. Omnipoint and its affiliates hold PCS licenses to serve nearly 100 million people throughout the United States. Omnipoint initiated commercial operations in New York state on November 14, 1996 and launched full PSC service in the New York Metro region (New York City, Northern New Jersey, Long Island, Westchester and Rockland Counties) in February, 1997, and in Upstate New York (part of its Mid-Atlantic region, including Albany, Syracuse, and Schenectady) in June, 1998.

The Commission accurately predicted that the new PCS industry would compete with the existing cellular industry, and that the changes in the telecommunications industry during the past several years "may increase the incentive for anticompetitive behaviors such as discriminatory interconnection."<sup>4/</sup> As the Commission recognized in its *Local Competition*

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<sup>4/</sup> *In the Matter of Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services; Implementation of Section 601(d) of the Telecommunications Act of 1996*, 12 FCC Rcd 15668,

*NPRM*, "[an incumbent] LEC has the incentive and the ability to prevent or reduce the demand for interconnection with a prospective local competitor, such as a CMRS provider, below the efficient level by denying interconnection...."<sup>5/</sup> This incentive can become discriminatory when it interferes with interconnection service provisioning or repairs:

Discrimination results when a LEC uses its control over bottleneck facilities to discriminate against competitors to the LEC's CMRS subsidiary by providing inferior interconnection services. This discrimination can take many forms, such as providing inferior quality interconnection, providing fewer lines (thus reducing the capacity of the competing system to complete calls), delaying the fulfillment of request for interconnection services, delaying repairs to interconnection facilities, and providing inferior quality repair services.<sup>6/</sup>

### **ARGUMENT**

#### **I. To Avoid Bell Atlantic Discriminatory Treatment of Broadbased PCS Providers, the Commission Must Ensure that Bell Atlantic Has Satisfied the Competitive Checklist As To All Facilities-Based Competitors, including Broadband PCS Providers.**

To be sure, except for a few passing references, the thrust of BA's application is concerning its claimed satisfaction of the Section 271 checklist as to facilities-based wireline CLECs, not PCS providers. However, the Commission observed as recently as last year in exercising its statutory review of another Section 271 application, that PCS providers are considered "facilities-based competitors" for the purpose of determining whether facilities-based

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15701 (1997) ("*Competitive Safeguards Order*").

<sup>5/</sup> *Id.* at 15702 quoting *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Notice of Proposed Rulemaking, 11 FCC Rcd 14171, 14177, ¶12 ("*Local Competition NPRM*").

<sup>6/</sup> *Competitive Safeguards Order*, 12 FCC Rcd at 15689, ¶29.

local competition exists in a given state.<sup>7/</sup> However, PCS services are not yet fully competitive with incumbent LEC wireline services. As the Commission has noted several times since March 1997 that PCS providers are "still making the transition from a complementary service to a competitive equivalent to wireline services."<sup>8/</sup> As recently noted by the Commission, "the broadband PCS sector remains in its early stages of development..." and that "while non-cellular mobile telephone operators have made significant inroads into the mobile telephone sector, they are still a relatively small portion of the whole sector."<sup>9/</sup> Omnipoint, which largely competes in BA's region, has a much smaller share of the wireless market than BA. Thus, as of the 4th Quarter of 1998, BA had 6.2 million mobile telephone subscribers (from 5.3 million year-end

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<sup>7/</sup> See, *In the Matter of Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, 13 FCC Rcd 6245, ¶6 (1998).

<sup>8/</sup> *Id.* at ¶¶ 6, 73 citing *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, FCC 97-75, Second Report, WT 97-14 at 55-56 (rel. Mar. 25, 1997); *Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and its Subsidiaries*, File No. NSD-L-96-10, FCC 97-286 at para. 90 ("stating that mobile telephone service providers, including PCS, "are currently positioned to offer products that largely complement, rather than substitute for, wireline local exchange.").

<sup>9/</sup> *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Fourth Report FCC 99-136 at 9, 31 (rel. June 24, 1999). Thus, according to one estimate on which the Commission relied, cellular operators had approximately 86% of mobile telephone subscribers, compared to broadband PCS with 10%, and digital SMR with 4%. *Id.* at 9. Curiously, BA relies on the Commission's Third Report to Congress of 1998, and not the Commission's 1999 Fourth Report for its hopeful conclusion that "falling prices and improving quality are rapidly narrowing the gap" between wireless and wireline services. See, Application at 59 n. 47. Apparently the Commission has not reached the same conclusion about the rapidity of the competitive threat of broadband PCS that BA has.



1997) as compared to Omnipoint's 376,000 as of the 4th Quarter of 1998.<sup>10/</sup> As the Commission has recognized, "the primary short-term advantage held by the incumbent cellular operator is its extensive coverage," and the largest cellular operators are mostly Bell Operating Companies like BA.<sup>11/</sup>

**II. Bell Atlantic Has Failed to Provide Omnipoint with Nondiscriminatory Unbundled Access to DS-1 or DS-3 Dedicated Transport Services (Checklist Items 1, 2, 4, and 5).**

Omnipoint relies exclusively upon BA to provision DS-1 or T-1 high capacity loops in New York and in other states throughout BA's region where Omnipoint offers service.<sup>12/</sup> No other carrier can provide the ubiquitous, bottleneck "last mile" connection between the switch and each of Omnipoint's cell sites sufficient for Omnipoint to build out its wireless footprint in a state the size of New York.<sup>13/</sup> Unfortunately, even assuming that BA's application is primarily directed to its CLEC performance, its claim that "it consistently delivers unbundled network elements on time, when competing carriers ask for them..." is an empty boast in Omnipoint's case. As of October 1, 1999, Omnipoint data confirms that since BA began installing DS-1 circuits for Omnipoint in New York State in 1996, it has missed between 34% and 65% of "Firm Order Commitment" ("FOC") dates -- dates agreed to in advance by negotiation with Omnipoint

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<sup>10/</sup> *Id.* at Appendix B, Mobile Telephony, Tables 4, 6, 10. Bell Atlantic Mobility has over 2.2 million more mobile customers than it had in the 3rd Quarter of 1996.

<sup>11/</sup> *Id.* at 28, 31.

<sup>12/</sup> Affidavit of Richard Johnson (Tab1) at 1-2; Affidavit of Dale Eckhoff (Tab 2) at 1-2.

<sup>13/</sup> *See id.*

- by an average of approximately eight (8) days in the New York Greater Metropolitan area.<sup>14/</sup>

This evidence confirms that BA-NY has an "abysmal" record of delivering DS-1 or DS-3 dedicated local transport facilities on time to its competitor, Omnipoint.<sup>15/</sup>

Omnipoint has had at least five (5) face-to-face meetings, written letters, held innumerable conference calls, and provided monthly performance reports, concerning the consistent problem of BA-missed FOC dates.<sup>16/</sup> Omnipoint even took the extraordinary step of offering to pay BA for overtime costs to have critical, overdue DS-1 circuit orders filled during a certain timeframe (an offer BA rejected).<sup>17/</sup> BA has neither provided Omnipoint DS-1 circuits on time, nor kept up with rising demand, as it claims. Knowing that Omnipoint's uncontroverted

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<sup>14/</sup> These statistics are derived from data collected by Omnipoint from over 360 DS-1 installations over a three year period for the New York City Metropolitan Area, including Manhattan, Bronx and Brooklyn. Johnson Affidavit at 2 & Exhibit A (three year data compilation).

<sup>15/</sup> Compare Johnson Affidavit at 2 with Application at 22; LaCouture/Troy Declaration at 27 ("BA-NY is also able to provision premium digital loops in *commercially reasonable* volumes.")(Emphasis added), 37, ("Through July 1999, BA-NY has in service about 325 dedicated local transport facilities." Para. 108.) Again, BA's filing is exclusively focused on its provisioning of CLECs, not on other facilities-based competitors who must also rely on BA bottleneck facilities in order to compete. BA fails to take into account any dedicated local transport facilities that BA-NY has been providing to non-wireline facilities-based competitors, such as the broadband PCS industry. BA has approximately 700 DS-1s in service in New York which are provided to support Omnipoint's New York network. They have *not* been provisioned by BA when Omnipoint wanted or needed them, and BA continues to consistently miss Firm Order Commitment dates for unbundled local transport, without providing reasonable notice or information to Omnipoint of installation dates being missed or the reasons for installation dates being missed. See Johnson Affidavit at 2, 4-5 & Exhibit A.

<sup>16/</sup> Johnson Affidavit at 3; Johnson Exhibits B, C & D.

<sup>17/</sup> Johnson Affidavit, Exhibit E.

data and correspondence confirm BA-missed FOC dates in the New York Metropolitan area alone nearly 50 percent of the time over a 3 year period, BA employees acknowledged to Omnipoint's Network Engineering Manager in an October 13, 1999 meeting that BA's figure of "84%" FOC dates met (a number creatively inflated by BA for internal consumption) for Omnipoint DS-1 installations in New York is greatly exaggerated.<sup>18/</sup> Therefore, the BA reported UNE Loop Provisioning Performance of 20.2 % missed appointments in July and 18.03% in August (retail) or 22.22% in July and 15.79% in August (CLECs),<sup>19/</sup> does not begin to reflect BA's performance in provisioning unbundled dedicated transport services to Omnipoint. Nor does BA's unbundled local transport data rebut its poor record of provisioning to Omnipoint. BA-NY claims that in August, 1999 its on-time completion rate for "CLECs' unbundled local transport orders was better than...[its] on-time completion rate for comparable retail orders."<sup>20/</sup>

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<sup>18/</sup> Johnson Affidavit at 4, para. 8. One favorite "escape valve" that BA uses to avoid missing FOC dates is to characterize FOC dates as "CNR" or "Customer Not Ready," when the customer (Omnipoint) is ready, but BA is not. A fundamental problem with BA FOC dates is that they are issued without any necessary coordination among BA employees. For example, Omnipoint has discovered on many missed FOC dates that either BA technicians did not have internal facilities in place. Why? Because the BA engineering and other departments had not been provided with the paperwork to process the DS-1 installations. *Id.* at 5, & Exhibit B. BA technicians have also arrived at an Omnipoint cell site the day of the FOC installation to lamely inform Omnipoint technician(s) that there are no T-1 facilities. *Id.* at 3.

<sup>19/</sup> Application, Joint Declaration of Dowell/Canny, Attachment G at 13. Even BA admits that it fell short of the mark for the Missed Appointments-Specials metric for the month of July, 1999, while under the scrutiny of the NY PSC. Joint Declaration of Dowell/Canny at 63. It rationalizes that if it had used another data source it would have made the grade. *Id.* This is akin to the school child attempting to explain his report card by saying if he had been given a different exam, he would have received a passing grade.

<sup>20/</sup> See LaCouture/Troy Declaration at 37, ¶109, citing "Carrier to Carrier Reports" (Dowell and Canny Decl. Att. D). Of course, by BA's own admission, its on-time completion rate data

Since BA cannot effectively demonstrate to the Commission that it can "efficiently furnish unbundled loops [i.e. high capacity loops like DS-1s] to other carriers [i.e. Omnipoint] within a reasonable time frame, with a minimum level of service disruption, and at the same level of service quality it provides to its own customers" its application cannot be approved by this Commission.<sup>21/</sup>

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does not begin to address its dissimilar performance with respect to Omnipoint or any other facilities-based PCS competitor. Furthermore, BA's "Carrier to Carrier Reports", a 108 page attachment, are an impenetrable "black box" of aggregated information that only BA can possibly decipher. No page reference to the Dowell/Canny Attachment D is provided by BA in the Lacouture/Troy Declaration, nor is a definition of "comparable retail orders" provided to evaluate the reasonableness of the comparison. Dedicated local transport, as BA recognizes, is a carrier service, Application at 22, so using the amorphous "comparable retail orders" as a performance standard is hardly a reliable barometer of satisfactory carrier-to-carrier provisioning. BA must provide access to competing carriers that is equivalent to the access that BA provides to itself, not undefined, other retail customers. *See Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20543, ¶139 (1997); *Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services In South Carolina*, Memorandum Opinion and Order, 13 FCC Rcd 539, ¶98 (1998). Moreover, the Carrier to Carrier Reports aggregate the data as "UNE POTS / Special Services Performance" without breaking down the data into specific categories such as "dedicated local transport" as discussed in its brief. Perhaps most telling of all, BA has failed to provide any data (percentages, or actual due dates made and missed) in its application quantifying how often it is meeting its due dates for competitors for unbundled dedicated local transport facilities.

<sup>21/</sup> *FCC Finds that BellSouth's Application To Provide Long Distance Service in Louisiana Satisfies More Than 6 Items on the 14-Point Checklist; Commission Denies Application and Provides Detailed Blueprint on Long Distance Entry*, Report No. CC 98-34, CC Docket No. 98-121, 1998 FCC LEXIS 5284 at 8 (Bell South failed to demonstrate nondiscriminatory access being provided to its unbundled local loops to ensure "new entrants can provide quality telephone service promptly to new customers without constructing new loops to each customer's home or business.").

A second cause of concern to Omnipoint is that BA cannot repair rather routine T-1 outages as quickly as it should, particularly when there may be an elementary fix to the outage that is entirely within BA's control.<sup>22/</sup> BA routinely fails to communicate with Omnipoint about the status of T-1 outages in New York. Outages of 12 to 20 hours occur on a regular basis.<sup>23/</sup> Trouble tickets must be escalated by several phone calls above the Bell Atlantic Call Center, because the Call Center rarely, if ever, returns Omnipoint's phone calls to report on the status of an outage.<sup>24/</sup> Omnipoint's experience has been that BA also regularly closes trouble tickets (BA repair orders) before requesting Omnipoint's acceptance of the circuit, and often before the circuit has been actually repaired.<sup>25/</sup>

Finally, despite certain mixed signals from BA employees, BA has been discriminatory and anticompetitively enforcing a T-1 repair "policy" against Omnipoint in New York.<sup>26/</sup> Beginning in January, 1999, without filing an amendment of its FCC special access tariff,<sup>27/</sup> or issuing a formal notice to all similarly situated customers, BA informed Omnipoint that it would no longer assign technicians to a dispatch list *until* Omnipoint had already dispatched a

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<sup>22/</sup> Eckhoff Affidavit at 7-8.

<sup>23/</sup> *Id.* at 6.

<sup>24/</sup> Eckhoff Affidavit at 7.

<sup>25/</sup> *Id.*

<sup>26/</sup> Eckhoff Affidavit at 3 & Eckhoff Exhibits A & B; Amato Affidavit (Tab 3) at 1-3.

<sup>27/</sup> *See*, Bell Atlantic Tariff F.C.C. No. 11, Original Page 7-108, 7. Special Access Service, 7.2.13 NYNEX Enterprise Services (New York Telephone Only)(C) NES Channel Descriptions (3) DS1 Channels. BA's Tariff provides that "[s]ervices are provided 24 hours daily, seven days per week, except as set forth in other applicable sections of this tariff." *Id.* at Sec. 2.1.1(D).

technician to the cell site of the affected T-1 outage.<sup>28/</sup> Even BA's Director-Wireless Service, BA Wholesale Services, was utterly astounded that this policy was being enforced and told Omnipoint that such a policy "*should [not] have been enforced in the previous incidents.*"<sup>29/</sup> Another BA Area Operations Manager confided to Omnipoint that this policy is "not set in stone."<sup>30/</sup>

Nevertheless, this anticompetitive "policy" continues to be selectively enforced by BA, with extremely harsh consequences upon Omnipoint and its network operations. BA has refused repeated Omnipoint requests to coordinate a 2 hour window for an Omnipoint technician to meet on-site with a BA technician to fix the outage.<sup>31/</sup> When the outage occurs after hours, there may be only one Omnipoint Field Operations technician for the entire downstate LATA 132. That technician may have several other maintenance or repair jobs, but cannot attend to them because he must wait for hours onsite to have a BA technician arrive at an uncoordinated time to repair an

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<sup>28/</sup> Eckhoff Affidavit at 2-6, Exhibits A & B.

<sup>29/</sup> *Id.* at 4; Eckhoff Ex. B.

<sup>30/</sup> Amato Affidavit at 3.

<sup>31/</sup> *Id.* at 5; Amato Affidavit at 2-3. BA asserts that it has undertaken extensive efforts under CLEC industry pressure and "under the close supervision of the NY PSC" to "closely coordinate" "hot cut" procedures to minimize any customer service interruptions when loops are transferred from BA to a CLEC, Application at 17-18 (claiming that 94 percent of 4,497 hot cut orders were completed on time and as requested from June 21 to September 17, 1999). It is difficult to understand, and BA has failed to offer any explanation, why it cannot coordinate technician meetings at Omnipoint cell sites to repair T-1 outages during a two hour window. Certainly, the level of coordination and resources required by BA to coordinate with an on-site visit with a single Omnipoint technician are far less demanding than are required to successfully complete the extensive "operating methods and procedures" BA has implemented for "hot cuts." See Application at 17-18, and Lacouture/Troy Decl. at ¶¶ 69-70.

outage so that an entire cell site (serving as many as 20 customer lines at one time), can become operational again.<sup>32/</sup> The collective cost to Omnipoint to get BA to simply do its job is enormous in terms of lost productivity, overtime expense and increased maintenance costs, and network down time.<sup>33/</sup> When contrasted with the deferential service BA provides its retail customers in providing far more reliable service or installation visits within 2 hour windows, it makes BA's assurances that Omnipoint is a "valued customer" ring hollow.<sup>34/</sup>

Clearly, BA's obligations to meet the Competitive Checklist are not limited to one group of competitors alone (i.e. facilities-based wireline CLECs), but to all facilities-based carriers. Omnipoint is providing service through a broad footprint to both residential and business customers in both densely and sparsely populated areas of New York State. BA should not be rewarded for providing what it argues is improved UNE provisioning and OSS to CLECs while shirking its statutory obligations to PCS providers.

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<sup>32/</sup> Eckhoff Affidavit at 5; Amato Affidavit at 3.

<sup>33/</sup> Eckhoff Affidavit at 5; Amato Affidavit at 3.

<sup>34/</sup> Eckhoff Affidavit at 5-6. Mr. Eckhoff recounts that his residential phone line was recently re-wired by Bell Atlantic during a two hour window in late July, 1999. Yet in BA's caste system, Omnipoint, a much larger and good business customer, is not treated as a valued customer but more like an "untouchable." Perhaps more accurately, BA's differential, discriminatory treatment of Omnipoint is better understood through the prism of an incumbent LEC viewing a broadband PCS competitor. *See*, discussion at 4 & n.11, *supra*.

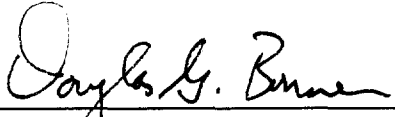
**CONCLUSION**

Therefore, for the foregoing reasons, BA's application for approval to enter the InterLATA market in New York should be denied as failing to satisfy Competitive Checklist Items 1, 2 and 4 of 47 U.S.C. § 271(c)(2)(B).

Respectfully submitted,

OMNIPOINT COMMUNICATIONS, INC.

By:

  
Douglas G. Bonner  
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Washington, D.C. 20036-5339  
(202) 857-6000

Its Attorneys

Dated: October 19, 1999



## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND SUMMARY .....	1
COMMENTS OF OMNIPPOINT COMMUNICATIONS, INC. ....	3
BACKGROUND AND STATEMENT OF INTEREST .....	4
I. To Avoid Bell Atlantic Discriminatory Treatment of Broadbased PCS Providers, The Commission Must Ensure that Bell Atlantic Has Satisfied the Competitive Checklist As To All Facilities-Based Competitors, including Broadband PCS Providers .....	5
II. Bell Atlantic Has Failed to Provide Omnipoint with Nondiscriminatory Unbundled Access to DS-1 or DS-3 Dedicated Transport Services (Checklist Items 1, 2, 4, and 5) .....	7
CONCLUSION .....	14

## APPENDICES

1. Johnson Affidavit
  - Exhibit A Omnipoint Data Compilation of Bell Atlantic's Record in NY State in Meeting FOC dates
  - Exhibit B Bell Atlantic/Omnipoint Meeting Agendas and Issue Lists
  - Exhibit C Omnipoint July 21, 1998 Letter to Bell Atlantic's Jack Goldberg re: Customer Service Issues
  - Exhibit D Omnipoint June 29, 1998 Letter to Mr. Mike Cotter, BA Director, Wireless Operations re: Bell Atlantic Missed FOC Dates for Omnipoint
  - Exhibit E Omnipoint November 26, 1996 Letter to BA's Antonio Yanez, Managing Director, Wireless Interconnection re: Overtime Offer to Clear Backlog of DS1 Orders

2. Eckhoff Affidavit

Exhibit A January 25, 1999 Bell Atlantic Fax to Omnipoint re: BA Dispatch Policy

Exhibit B February 9, 1999 Email of Kevin Forshee, Omnipoint Director of Site Acquisition for the New York MTA, re: "Potential Bell Atlantic Policy Change"

Exhibit C June 15, 1998 Letter from Antonio Yanez, BA Network Services Vice President, TIS Account Management to Ralph Davis, Senior Technical Director, Omnipoint, New York MTA

3. Amato Affidavit



**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of	)	
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Application by New York Telephone	)	
Company (d/b/a Bell Atlantic -	)	
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Distance Company, and Bell Atlantic	)	
Global Networks, Inc., for	)	
Authorization to Provide In-Region,	)	
InterLATA Services in New York	)	

**AFFIDAVIT OF RICHARD JOHNSON**

Richard Johnson, being duly sworn upon oath, deposes and states as follows:

1. My name is Richard Johnson. For the past two and one-half years, I have been employed as Omnipoint's Network Engineering Manager. My business address is 11 High Point Drive, Wayne, New Jersey 07470. I am principally responsible for Omnipoint's network planning and provisioning in the states of New Jersey, Connecticut and in the Greater Metropolitan Area including Long Island. I have nineteen (19) years of experience in the telecommunications industry.

2. The principal focus of my affidavit is to address Bell Atlantic's (BA) consistent failure to meet "Firm Order Commitment" dates ("FOCs") provided by to BA to Omnipoint for installation of dedicated point-to-point T-1 facilities required for the buildout of Omnipoint's network in the New York greater Metropolitan Area including Long Island in any month from 1996 through September, 1999. Secondly, my affidavit focuses on BA's failure to provide any notice to Omnipoint when it misses a FOC date, forcing Omnipoint to miss PCS network deployment dates, to readjust its network planning to expend substantial additional resources to

investigate and seek a cure for the missed FOCs, and to seek to have the missed FOC filled as soon as possible by BA. Omnipoint exclusively leases these T-1 facilities from Bell Atlantic("BA")in New York, and in other states within BA's region, since in most cases, Bell Atlantic is the only carrier capable of providing such facilities to Omnipoint.

3. In my capacity as Network Engineering Manager, I regularly track installation of facilities by BA to Omnipoint cell sites in my assigned states. I have sent monthly performance reports to BA concerning its record of meeting FOC dates for T-1 installations. According to Omnipoint data maintained in the normal course of Omnipoint's business, which I have organized and analyzed, BA's record in New York of meeting its own FOC dates for T-1 installations for Omnipoint in New York Greater Metropolitan Area has been abysmal. The following summarizes BA's record in New York Greater Metropolitan Area state of meeting FOC dates for Omnipoint:

<b><u>New York locale</u></b>	<b><u>Percentage Missed FOCs</u></b>	<b><u>Average Days FOC Is Late</u><sup>1</sup></b>
Lower Manhattan (NY01)	54%	6 days
Upper Manhattan (NY02)	39%	10 days
Bronx (NY03)	65%	3 days
Brooklyn (NY04)	34%	14 days

See Exhibit A for data compilation.

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<sup>1</sup>The total number of days are rounded to nearest complete day of delay in meeting FOC.

4. I have participated in a number of meetings between Omnipoint and Bell Atlantic over the past several years to address missed FOC issue. These have included face-to-face meetings on October 13, 1999; August 20, 1998; August 11, 1998; February 9, 1998 and June 27, 1997. See Exhibit B (Meeting Agendas, and issue lists). There also have been many more conference calls preceding these meetings on which Omnipoint personnel, including myself, have spent countless hours.

5. The following BA failures in meeting FOC dates from 1996 to date for BA T-1 installations have been documented by Omnipoint:

- A) BA misses Firm Order Commitment dates with inadequate notification to Omnipoint (See Exhibit B ("Bell Atlantic Issues"); Exhibit C (Omnipoint July 21, 1998 letter to BA's Jack Goldberg); Exhibit D (Omnipoint June 29, 1998 letter from Michael Fulton, Technical Director, NY Region to Mr. Mike Cotter, BA Director, Wireless Operations))
- B) BA frequently makes unilateral changes to FOC dates on the day of the original FOC date to its customer, Omnipoint, without advance consultation about its inability to meet a FOC date. Certainly, if BA has a legitimate foreseeable problem for not meeting a FOC date, there is no reason it cannot notify the customer in advance to request such a change. On the contrary, BA technicians instead arrived at one Long Island site the day of the FOC and only then "reported [to Omnipoint] that there were no [T-1] facilities." These unilateral FOC date changes are a sham attempt by BA to improve its own service quality measurements. Exhibits B & C.
- C) The evidence confirms that BA issuance of FOC dates to Omnipoint are instead BA "SOC" dates ("Speculative" not "Firm" Order Commitments) inasmuch as BA Engineering and other essential departments repeatedly inform Omnipoint that they have "not received the necessary paperwork" by the FOC date. *Id.* Omnipoint has repeatedly requested a minimum 5 business day notification when BA is encountering problems meeting FOC dates.
- D) BA's Call Center Dispatch advises Omnipoint on a FOC date that it "has no record of [the T-1 installation] site on FOC date." *Id.*
- E) The BA Telecom Industry Services Operations Center ("TISOC") "rarely, if ever, has valid

information on our first attempt to escalate issues. Furthermore, answers are regularly incorrect or inadequate.” *Id.*

6. BA’s failure to clear a backlog of overdue FOC orders has continued unabated even after Omnipoint indicated its willingness as early as November, 1996, to pay BA “overtime” to clear the backlog of pending DS-1 (T-1) orders. See Exhibit E (November 26, 1996 letter from Omnipoint’s Carl Hansen to BA’s Antonio Yanez, Managing Director, Wireless Interconnection).

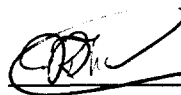
7. BA North (New York) lacks the “Request Net” tracking system used by BA South for interconnection or access provisioning for all wireless carriers. Ameritech and BellSouth also have superior operational support systems in place for tracking wireless industry orders, which allows Omnipoint to receive the status of pending T-1 installations.

8. BA personnel routinely filter and manipulate the statistics concerning their meeting or missing FOC dates for internal reporting purposes. As discussed above, they routinely make unilateral changes to FOC dates due to BA internal delays or difficulties (i.e. when the Engineering department has not received the necessary paperwork to process a T-1 installation). BA also characterizes a number of FOC dates as “CNR” (Customer Not Ready), when the customer is ready, but BA is not. I met as recently as October 13, 1999 with Michael Cotter, BA’s Director of Wireless Operations. Mr. Cotter claimed that according to BA’s records, 84% of BA’s T-1 installations for Omnipoint in New York have been on time. When I challenged that figure as exaggerated, other BA personnel attending the meeting admitted that the BA 84%

figure reflected in BA's records is unreliable. I also told Mr. Cotter that Omnipoint requests that BA not issue a FOC date to Omnipoint without first clearing such a date with its engineers.


9. This concludes my affidavit.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

  
Richard Johnson

STATE OF NEW JERSEY   )  
  )  
COUNTY OF *PASSAIC*   )

Sworn to before me this  
18<sup>th</sup> day of October, 1999.

  
Notary Public

Maureen P. Hranek  
Notary Public of New Jersey  
My Commission Expires Aug. 17, ~~1999~~ 2003

My Commission Expires \_\_\_\_\_